RECENT IMPORTANT DECISIONS.

ANIMALS—ABUSE—MALICE TOWARD THE OWNER.—Defendant was prosecuted under section 11,581 Mich. Comp. Laws, which provides a penalty for wilfully and maliciously killing, maiming, or disfiguring the horses, cattle or other beasts of another. The particular offence charged was that the defendant had put a strap around the tongue of another's horse and had pulled upon it until he had injured the animal so badly that it had to be killed. The evidence conclusively showed that the acts were committed because the defendant became angry at the animal for refusing to do its work, and not because of any malice or ill-will toward the owner. A verdict of guilty was affirmed by the Supreme Court. *People* v. *Tessmer* (Mich. 1912) 137 N. W. 214.

The court attempts to distinguish, but seems to overrule, a previous case construing the same statute, in which it was said, "Malice is an essential ingredient of the crime, and under the clear weight of authority, both in England and the United States, the malice required must be toward the owner or custodian of the animal, and not malice toward the animal." *People* v. *Minney,* 155 Mich. 534. In *State* v. *Harris,* 11 Iowa 414, the court held, "Malice toward the owner of the animal is the ingredient of this offence." See *United States* v. *Gideon,* 1 Minn. 226; *Chappell* v. *State,* 35 Ark. 345; *State* v. *Newby,* 64 N. C. 23; 2 CYC. 429. That the statute in the principal case was enacted to protect the owner and not to protect the animal seems clear from the considerations that the animal must belong "to another," that the statute is classified under the head, "Offences Against Property," and that another section of the Michigan statutes provides a penalty for cruelty to animals. Among the old English statutes directed against malicious mischief the most noted was the "Black Act." (9 Geo. I. ch. 22.) Of the Black Act it was said, "It is clearly settled, that in order to bring an offender within this law the malice must be directed against the owner of the cattle and not merely against the animal itself." 2 East P. C. 1072. "In the United States most statutes prescribing a penalty for the malicious destruction of property are sufficiently like those of England to warrant the inference that they were modeled upon them, and for this reason they have generally, but not always, been given the same construction." *State* v. *Boies,* 68 Kan. 167; 25 CYC. 1676.

ASSAULT AND BATTERY—APPARENT ABILITY.—Defendant was charged with committing an assault upon H. The evidence showed that defendant pointed a gun at H; that W, who was with H, immediately covered defendant with his gun; that H did not see what was going on until defendant was hors de combat by reason of being covered by the gun in the hands of W. There was no evidence to show that defendant's gun was loaded. *Held,* (SMITH, J., dissenting), that an order directing a verdict of not guilty was proper. *State* v. *Barry* (Mont. 1912) 124 Pac. 774.

"It may be regarded as settled in most jurisdictions that a present apparent ability to inflict a battery is sufficient to render an assault criminal, and that actual ability is not necessary." CLARK AND MARSHALL, THE LAW OF CRIMES, § 206. If a well-founded apprehension of a battery is created in the mind of the person against whom the act is directed, it has usually been held that the assault is complete. See 3 CYC. 1025, and cases there cited. In the principal case the court held that the defendant had neither the actual nor the apparent ability to inflict harm upon H, for the reason that when H first saw the defendant, the defendant had been covered by W's gun and rendered completely harmless, and that since H was not put in fear and had no apprehensions as to his safety, no assault had been committed. SMITH, J., in a convincing dissenting opinion, said, "I do not think the apprehension of a battery is necessarily confined to the person toward whom the weapon is directed. Such apprehension may be excited in the breast of a third person as was the case here." Judge SMITH intimates that an act creating such an apprehension in the mind of a third party is as provocative of a breach of the peace as if it had created the apprehension in the mind of the person against whom the act was directed. Neither the Court nor the dissenting Judge cited cases directly on this point, and none have been found.

BANKRUPTCY—MARSHALING ASSETS OF PARTNERSHIP AND OF CONSTITUENT FIRM.—The firm of K. & Co., doing business in Pennsylvania, was there adjudicated bankrupt; it was composed of one individual and the firm of A. & K. doing business in Massachusetts. The firm of A. & K. assigned for the benefit of its creditors under the Massachusetts statute, and the assignee, after liquidating the assets, turned over the proceeds to the trustee in bankruptcy of K. & Co. The creditors of A. & K. claim priority as to this fund, and the creditors of K. & Co. claim to share *pari passu* with the creditors of A. & K. *Held,* the creditors of A. & K. are entitled to priority. *In re Knowlton & Co.* (D. C. Pa. 1912) 196 Fed. 837.

Except for the ruling of Lord THURLOW, who permitted joint creditors to share *pari passu* in the separate estate with separate creditors (*Ex parte Cobham,* 1 Bro. Ch. 576; *Ex parte Hodgson,* 2 Bro. Ch. 5; *Ex parte Page,* 2 Bro. Ch. 119; *Ex parte Flintum,* 2 Bro. Ch. 120), the rule in Chancery has been uniform in settling estates of bankrupt partnerships, that "the joint creditors take the joint estate, and the separate creditors the separate estate" and only the surplus that may remain of either estate is subject to the claims of the other class of creditors. *Ex parte Crowder,* 2 Ves. 706; *Ex parte Cook,* 2 P. Wms. 500; *Ex parte Elton,* 3 Ves. 238; *Ex parte Clay,* 6 Ves. 813; *In re Rowland and Crankshaw,* 1 Ch. App. 421; *Ex parte Hayman* (*In re Pulsford*), L. R. (1878) 8 Ch. Div. 11. To this extent the partnership was considered as an "entity" distinct from its members. The Bankruptcy Act, 1898, § 5 f is merely declaratory of this pre-existing rule of equity. *Buckingham* v. *First National Bank,* 131 Fed. 192; *Sargent* v. *Blake,* 160 Fed. 57. The principal case is novel under the present Bankruptcy law because of its facts. In reaching its decision the court held that the firm of A. & K., as well as the firm of K. & Co., must be considered in the nature of a legal entity.